



Court File No. VLC-S-S-193180  
NO. \_\_\_\_\_  
**VANCOUVER REGISTRY**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

BRUCE CRAN

**PLAINTIFF**

**AND:**

MADRONA SCHOOL SOCIETY, JEFFREY BENNA, DORAN CHANDLER, DEBORAH HOBSON, SHELLEY HULKO, KAREN LIVINGSTONE, IVOR LUK, and JAY SCHLOSAR

**DEFENDANTS**

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) File a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) Serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) File a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) Serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

**Time for Response to Civil Claim**

A Response to Civil Claim must be filed and served on the Plaintiff

- (a) If you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (b) If you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) If you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) If the time for response to civil claim has been set by order of the court, within that time.

## **CLAIM OF THE PLAINTIFF**

### **Part 1: STATEMENT OF FACTS**

1. The Plaintiff, Bruce Cran, is a businessman with an address c/o McLean & Armstrong LLP, #300 – 1497 Marine Drive, West Vancouver.
2. The Defendant Madrona School Society (“Madrona”) is a society incorporated under the *Societies Act*, SBC 2015, c. 18 with a registered address at 530 Hornby Street, Vancouver, BC.
3. The other Defendants are Madrona’s board of directors from April 2017, which was composed of the following members:

- (a) Jeffrey Benna, 3826 23<sup>rd</sup> Avenue, West Vancouver, BC, V6S 1K9;
- (b) Doran Chandler, 591 18<sup>th</sup> Avenue, West Vancouver, BC, V5Z 1V7;
- (c) Deborah Hobson, 2290 Redbud Lane, Vancouver, BC, V6K 4S6;
- (d) Shelley Hulk, 932 Canyon Boulevard, North Vancouver, BC, V7R 2J8;
- (e) Karen Livingstone, 8268 Government Road, Burnaby, BC, V5A 2E3;
- (f) Ivor Luk, 2150 6<sup>th</sup> Avenue, West Vancouver, BC, V6K 1V6; and
- (g) Jay Schlosar, 904-1661 Ontario Street, Vancouver, BC, V5Y 0C3.

(collectively the “Directors”)

4. Madrona operates a primary & junior school at 2040 West 10<sup>th</sup> Avenue, Vancouver, BC (the “School”).

5. The Plaintiff's two children attended the School from 2014 to 2017.
6. In October 2015 the Plaintiff provided \$500,000 (the "Funds") to Madrona to be used by Madrona on the conditions that:
  - (a) management of the school would be consistent;
  - (b) Kelly Reynolds would remain on staff;
  - (c) the Plaintiff would be informed and provided financials of how and when the money was being used; and
  - (d) the Funds would be put towards the construction or new lease of a single building school.

(the "Conditions Subsequent")

7. The Funds were provided as a conditional gift on the understanding that if the Conditions Subsequent were not satisfied, the Funds would be returned to the Plaintiff.
8. The Plaintiff delivered the Funds to Madrona through an agent, Ms. Rosanne Day, so as to preserve the anonymity of his children.
9. Madrona has not complied with the Conditions Subsequent including by, *inter alia*:
  - (a) inconsistently managing the School as the board members were changed;
  - (b) Kelly Reynolds was not retained on staff;
  - (c) Madrona spent the Funds without providing the Plaintiff with financial information about how and when the Funds were spent; and
  - (d) no new single building was constructed or leased for the School.
10. On March 28, 2017 the Plaintiff delivered a demand to Madrona that the Funds be returned to the Plaintiff.
11. On April 4, 2017 Madrona delivered a letter to the Plaintiff refusing to return the Funds to the Plaintiff.

12. Because the Funds were provided as a conditional gift to Madrona, and the Conditions Subsequent have not been satisfied, the Plaintiff is entitled to have the Funds returned to him.

13. The Directors were aware of the Conditions Subsequent and knowingly breached those conditions by wrongly appropriating or converting the Funds.

## **Part 2: RELIEF SOUGHT**

14. The Plaintiff claims as follows:

- (a) a declaration that the Funds constitute a conditional gift;
- (b) a declaration that the Conditions Subsequent of the conditional gift were not met;
- (c) an order that Madrona return the Funds to the Plaintiff with interest;
- (d) a declaration that Madrona is liable to the Plaintiff for the amount of the Funds with interest;
- (e) a declaration that the provision of the Funds by the Plaintiff to Madrona for the purpose of the Conditions Subsequent created an implied trust – specifically a constructive trust;
- (f) a declaration that as a constructive trustee, Madrona hold the Funds in trust for the Plaintiff;
- (g) an order that Madrona account for and provide to the Plaintiff the constructive trust property, specifically the amount of the Funds plus any profits obtained through use of the Funds by the trustee;
- (h) a declaration that as directors of the corporate trustee, the Directors are liable to the Plaintiff for the amount of the Funds with interest;

- (i) an accounting and tracing of all constructive trust property wrongfully misappropriated and converted by the Defendants and any profits made or benefits received as a result of the same;
- (j) an order that the Defendants reconstitute the Funds which they hold or held in trust for the Plaintiff and deliver those Funds to the Plaintiff;
- (k) general damages against the Defendants;
- (l) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (m) special costs or, in the alternative, costs; and
- (n) such further and other relief as this Honourable Court may find just.

### **Part 3: LEGAL BASIS**

#### **Conditional Gift**

15. Where a person delivers a gift for a particular purpose and where the donee makes use of it for another purpose, the donee will no longer be entitled to the gift.

*Zhou v Wang*, 2004 BCSC 1073

16. Any gift may be made conditional, or subject to revocation. A term to that effect may be expressed or it may be implied.

*Vogler v Matzick*, [1988] BCJ No. 2369

17. The Plaintiff made a gift to Madrona, subject to conditions and that the gift was to be used for a particular purpose – that is, the Conditions Subsequent. Madrona did not comply with those conditions. Thus, the Plaintiff is entitled to revoke the gift, Madrona is no longer entitled to it, and it must be returned to the Plaintiff.

### **Constructive Trust**

18. In the alternative, the Funds are subject to a constructive trust.
19. The constructive trust is an equitable vehicle for relief. It is understood primarily as a remedy, which may be imposed at the court's discretion where good conscience so requires.

*Moore v Sweet*, 2018 SCC 52

20. As the Funds were provided to Madrona subject to the Conditions Subsequent – in particular for the construction or lease of a new single building for the school – and those conditions were not met, the Funds have been wrongly appropriated or converted. The Plaintiff retains an equitable entitlement to the property and any proceeds arising therefrom.

21. The constructive trust is implied by operation of law. The Funds are a trust property; Madrona is the trustee; the Plaintiff is the beneficiary.
22. By operation of the constructive trust, the trust property – the Funds and proceeds arising therefrom – must now be delivered to the Plaintiff beneficiary.

### **Directors Personally Liable**

23. A person who is the controlling or directing mind of a corporate trustee can be liable for an innocent or negligent breach of trust if the person knowingly assisted in the breach of trust.

*Air Canada v M & L Travel Ltd*, [1993] 3 SCR 787

24. The Directors knowingly participated in the breach of trust when they converted the Funds without adhering to the Conditions Subsequent, therefore they may be found personally liable.

**Plaintiff's Address for Service:**                   McLean & Armstrong LLP  
Barristers & Solicitors  
300 – 1497 Marine Drive  
West Vancouver, BC V7T 1B8  
Attention: M. Preston  
Telephone: (604) 925 0672

Fax number address for service:                   (604) 925 8984

Email address for service:                         *None Authorized*

Place of trial:    Vancouver, BC

The address of the registry is:                      Vancouver Law Courts  
800 Smithe Street  
Vancouver, BC V6Z 2E1

Dated: March 25, 2019




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Signature of Lawyer for Plaintiffs  
McLean & Armstrong LLP  
Per: Mike Preston

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) Prepare a List of Documents in Form 22 that lists
    - (i) All documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) All other documents to which the party intends to refer at trial, and
  - (b) Serve the list on all parties of record.

## APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

Agency. Misappropriation.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case.]*

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investments losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES**

*[Check all boxes below that apply to this case]*

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

*The Court Order Interest Act, R.S.B.C. 1996, c. 79.*